

Memorandum

To : Mr. Timothy Boyer
Interim Executive Director – MIC: 73

Date: March 4, 2004

From : Ramon J. Hirsig, Deputy Director
Sales and Use Tax Department – MIC: 43



Subject : Regulation 1614, *Sales to the United States and its Instrumentalities*
Chief Counsel's Rulemaking Calendar -
March 23, 2004

I am requesting your approval to place proposed amendments to Regulation 1614, *Sales to the United States and its Instrumentalities*, on the Chief Counsel's Rulemaking Calendar for Board approval.

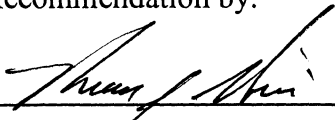
The purpose of the revision is to replace outdated language in subdivision (g) Supporting Documents, that no longer pertains to current U.S government purchasing practices. Attached is a copy of proposed amendments to the regulation.

We request your approval to place the matter on the Chief Counsel's Rulemaking Calendar on March 23, 2004, for Board authorization to amend the regulation in accordance with Title 1, California Code of Regulations, section 100. Legal Department staff has advised us that these changes are without regulatory effect and are not subject to the normal public hearing process.

If you have any questions regarding this request, please let me know or contact Ms. Mariflor Jimenez at (916) 324-2952.

Attachment

Recommendation by:




Ramon J. Hirsig, Deputy Director

Approved:



Timothy Boyer, Interim Executive Director

Approved:



Acting Chief Counsel
Legal Department

BOARD APPROVED

At the _____ Board Meeting

Deborah Pellegrini, Chief
Board Proceedings Division

cc (all with attachment):
Acting Chief Counsel (MIC 83)
Ms. Deborah Pellegrini (MIC 81)
Ms. Janice Thurston (MIC 82)
Mr. Jeffrey Graybill (MIC 82)
Mr. John Waid (MIC 82)
Ms. Trecia Nienow (MIC 82)
Mr. Randy Ferris (MIC 82)
Mr. Jeffrey L. McGuire (MIC 92)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Laureen Simpson (MIC 50)
Mr. Todd MacMurray (MIC 50)
Ms. Mariflor Jimenez (MIC 50)

BOARD OF EQUALIZATION
REGULATORY ACTION IN ACCORDANCE
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

**RULE/REG 1614 SALES TO THE UNITED STATES AND ITS
INSTRUMENTALITIES**

REASON FOR CHANGE (check those applicable)

- ☐ renumbering, reordering, or relocating regulatory provision
- ☐ deleting regulatory provision for which all statutory or constitutional authority has been repealed
- ☐ deleting regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a US District Court located in the State of California, the US Court of Appeals for the Ninth Circuit, or the US Supreme Court
- ☐ revising structure, syntax, cross-reference, grammar, or punctuation
- ☐ changing an "authority" or "reference" citation
- ☒ making consistent with changed state or federal authority if (A) provision is inconsistent with and superseded by changed authority; and (B) Board has no discretion to adopt a change which differs in substance from this proposal

Therefore, I recommend that these amendments be submitted to OAL as a change without regulatory effect and without public hearing.

Prepared by Todd MacMurray Date 1-27-04

Approvals
Tax Policy Division Mgr. [Signature] Date 2/11/04
Deputy Director [Signature] Date 2/27/04
Assistant Chief Counsel [Signature] Date 2/26/04
Acting Chief Counsel [Signature] Date 2/26/04
Chief, Board Proceedings _____ Date _____

INSTRUCTIONS:

After approval, forward to next on list. In the event of disapproval, return to preparer.

Section 100. Publication of "Changes Without Regulatory Effect."

(a) Subject to the approval of OAL as provided in subsections (c) and (d), an agency may add to, revise or delete text published in the California Code of Regulations without complying with the rulemaking procedure specified in Article 5 of the APA only if the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. The addition, revision or deletion is a "change without regulatory effect." Changes without regulatory effect include, but are not limited to:

- (1) renumbering, reordering, or relocating a regulatory provision;
- (2) deleting a regulatory provision for which all statutory or constitutional authority has been repealed;
- (3) deleting a regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a United States District Court located in the State of California, the United States Court of Appeals for the Ninth Circuit, or the United States Supreme Court; however, OAL shall not approve any proposed change without regulatory effect if the change is based on a superior court decision which invalidated the regulatory provision solely on the grounds that the underlying statute was unconstitutional;
- (4) revising structure, syntax, cross-reference, grammar, or punctuation;
- (5) changing an "authority" or "reference" citation for a regulation; and,
- (6) making a regulatory provision consistent with a changed California statute if both the following conditions are met:
 - (A) the regulatory provision is inconsistent with and superseded by the changed statute, and
 - (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

(b) In submitting a change without regulatory effect to OAL for review the agency shall:

- (1) submit seven copies of the regulation with an addition shown in underline or italics and a deletion shown in strike-out; and
- (2) attach to each copy a completed Form 400, with at least one Form 400 bearing an original signature; and
- (3) submit a written statement explaining why the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

(c) OAL shall determine whether a change submitted is a change without regulatory effect within 30 working days of its receipt. OAL shall send written notification of the determination to the agency which submitted the changes.

(d) If OAL determines that the submitted change is a change without regulatory effect, OAL shall file it with the Secretary of State and have it published in the California Code of Regulations.

Proposed Amendments to Regulation 1614. SALES TO THE UNITED STATES AND ITS INSTRUMENTALITIES.

Reference: Section 6381, 6381.5, Revenue and Taxation Code.

(a) GENERALLY. Sales tax does not apply to sales to:

- (1) The United States or its unincorporated agencies and instrumentalities.
- (2) Any incorporated agency or instrumentality of the United States wholly owned by either the United States, or by a corporation wholly owned by the United States.
- (3) The American National Red Cross, its chapters and branches.
- (4) Incorporated federal instrumentalities not wholly owned by the United States, unless federal law permits taxing the instrumentality. Examples of incorporated federal instrumentalities exempt from tax are federal reserve banks, federal credit unions, federal land banks, and federal home loan banks.

Application of the use tax to the storage, use, or other consumption of tangible personal property by agencies or instrumentalities of the United States is prohibited unless federal law permits taxing the agency or instrumentality.

Where payment for tangible personal property sold or consumed in this state is made partly by the United States or its instrumentalities and partly by nonexempt persons, the payment is exempt to the extent of the United States' or its instrumentality's share provided it is made directly to the vendor by the United States or its instrumentality. If the nonexempt party makes full payment and then seeks reimbursement from the United States or its instrumentality, the entire amount is taxable even though the United States or its instrumentality may reimburse him in full or in part.

(b) ARMY AND AIR FORCE EXCHANGE SERVICES, NAVY EXCHANGES, COAST GUARD EXCHANGES, OPEN MESSES, AND OFFICERS' MESSES. Army and air force exchange services, navy exchanges, coast guard exchanges, open messes, and officers' messes, established pursuant to regulations of the appropriate branch of the armed services are instrumentalities of the United States, and tax does not apply to sales to these organizations.

Tax applies to sales to persons in the armed services of the United States, notwithstanding the circumstance that the merchandise may be billed through any army or air force exchange service, navy exchange, coast guard exchange, or similar organization.

(c) COMPANY AND OTHER UNIT FUNDS. Tax does not apply to sales to the armed services of merchandise purchased with unit and similar funds (company, troop, hospital, recreation, welfare, etc.) where the expenditures are made in accordance with appropriate regulations of the armed services for the general benefit of armed services personnel.

(d) CIVILIAN WELFARE FUNDS. Civilian welfare funds are established and administered under armed services regulations under which post restaurants are also administered. Both are nonappropriated fund activities and are unincorporated governmental instrumentalities. Accordingly, sales tax does not apply to sales made to such organizations properly conducted and operated at military installations in this state in accordance with appropriate regulations.

Any seller to such organizations claiming a transaction as exempt from sales tax must obtain from the purchaser a certificate similar to the following:

This is to certify that the _____
(Name of Fund)
located at _____ is a nonappropriated
(Name of Installation)
fund activity located at a military installation of the United States in the State of California and is conducted and operated in accordance with armed services regulations established for such activities. As such, sales to this nonappropriated civilian welfare fund are exempt from California state and state-administered local sales taxes.

Signature of Commanding Officer or Representative

Print or Type Name

Rank

Date

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Proposed Amendments to Regulation 1614 (Continued)

(e) The Selective Service System. Tax does not apply to receipts from sales to State Procurement Officers for selective service authorized by selective service regulations.

(f) Medicare Program. Tax does not apply to the sale of items to a person insured pursuant to Part A of the Medicare Act as such sales are considered exempt sales to the United States.

Tax applies to the sale of an item to a person insured pursuant to Part B of the Medicare Act even though the person assigns the claim for reimbursement to the retailer and the retailer files the claim with, and is paid by, a carrier administering medicare claims under contract with the United States.

(g) Supporting Documents. Any seller claiming a transaction as exempt from tax under Section 6381 must obtain from the purchaser, and retain, a government purchase order or documents demonstrating direct payment by the United States~~a government remittance advice~~ to support ~~his~~the purchaser's claim.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.